

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK ANTHONY BROWN,

Plaintiff,

v.

A. JARAMILLO, et al.,

Defendants.

Case No. 1:20-cv-00661-NONE-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

(ECF Nos. 75, 80)

Plaintiff Mark Anthony Brown is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On September 23, 2021, Defendants filed a motion for summary judgment arguing that Plaintiff failed to exhaust his administrative remedies before filing this lawsuit. (ECF No. 75). On October 4, 2021, Plaintiff filed an *ex parte* motion for enlargement of time to file his opposition to the motion for summary judgment. (ECF No. 79). The Court granted the motion, ordering "Plaintiff's opposition to Defendants' motion for summary judgment on the issue of exhaustion [to] be filed no later than December 6, 2021." (ECF No. 80, p. 2). To date, Plaintiff has not filed an opposition to the motion for summary judgment, and the time for him to do so has expired.

Local Rule 230(l) provides that the failure "to file an opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions." While a motion for summary judgment cannot be granted by default, *Heinemann v. Satterberg*, 731 F.3d 914, 916 (9th Cir. 2013), the Court does have other options when a party fails to respond. For example, if Plaintiff fails to respond, the Court

1 may treat the facts asserted by Defendants as “undisputed for purposes of the motion.” Fed. R.
2 Civ. P. 56(e)(2).

3 However, given Plaintiff’s *pro se* status, the Court will not impose any sanctions or treat
4 the facts asserted by Defendants as undisputed at this time. Rather, to ensure that Plaintiff has had
5 a sufficient opportunity to respond, the Court will grant Plaintiff one final opportunity to respond.
6 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

7 1. Plaintiff has until December 21, 2021, to file and serve an opposition or a
8 statement of non-opposition to Defendants’ motion for summary judgment, or to request
9 additional time to do so.

10 2. If Plaintiff files an opposition, Defendants have seven days from the date the
11 opposition is filed in CM/ECF to file and serve a reply to the opposition.

12 3. If Plaintiff fails to comply with this order, in ruling on Defendants’ motion for
13 summary judgment the Court may treat the facts asserted by Defendants in the motion for
14 summary judgment as undisputed. Alternatively, the Court may recommend that this case be
15 dismissed for failure to prosecute and failure to comply with a court order.

16
17 IT IS SO ORDERED.

18 Dated: **December 7, 2021**

19 /s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE